

application may be made to the circuit court for the county where the estate lies, or if the land lies in different counties, to the circuit court for the county where the greater part of the land lies, or if the land lies in the city of Baltimore, then to the superior court or circuit court or circuit court No. 2 of said city; and the court shall appoint and issue a commission of five discreet, sensible men, to be commissioners, authorizing and empowering them, or a majority of them, to proceed in the premises according to the directions of this article, and in all respects conform to and comply with the provisions hereof; and the said commissioners, or a majority of them, before they proceed to act, shall severally take an oath (to be annexed to the said commission), before some justice of the peace for the county or city, or other person authorized to administer an oath, well and faithfully to perform the duties required of them by the commission, without favor, partiality or prejudice, and according to the best of their judgment and understanding.

What allegations are necessary to give the court jurisdiction under this section? Errors in procedure, though ground for a bill of review after decree, do not affect jurisdiction. *Tomlinson v. McKaig*, 5 Gill, 275. And see *Roser v. Slade*, 3 Md. Ch. 91; *Hughes' Case*, 1 Bl. 46; *Chaney v. Tipton*, 11 G. & J. 255; *Hardy v. Summers*, 10 G. & J. 323; *Thompson v. Tolmie*, 2 Pet. 163.

The bill or petition under this section must recognize the eldest son's right of election and must be in accordance with the descent laws. Necessary allegations. *Chaney v. Tipton*, 11 G. & J. 255.

The jurisdiction of equity, and of old county courts, in cases of partition where land is situated in one county only, is well established. The proceedings may be by *ex parte* petition or by bill and answer, but in both cases they must conform to requirements of descent laws. What commission should require, and return show, relative to widow's dower. *Phelps v. Stewart*, 17 Md. 239; *Bennett v. Bennett*, 5 Gill, 463. And see *Hardy v. Summers*, 10 G. & J. 322.

Division and election apply only to property held by inheritance, and not to property taken by will or by purchase. *Johnson v. Hoover*, 75 Md. 489; *Colston v. Dorchester Court*, 4 H. & McH. 283.

Act of 1820, ch. 191, must be strictly complied with. A commission held not to be in compliance with the law, and hence invalid. *Stallings v. Stallings*, 22 Md. 46.

If oath is not annexed to the commission, and the commission and return do not appear to have been ratified, the commission is invalid. *Massey v. Massey*, 4 H. & J. 141.

The court will not be prevented from issuing a commission by purchase of interests of several of heirs, including a purchase from husband of one of heirs, of his wife's interest, no binding conveyance having been procured from wife. *Chaney v. Tipton*, 3 Gill, 334.

For a case involving the question of "*res adjudicata*," as applicable to a proceeding under this section, see *Hardy v. Summers*, 10 G. & J. 316.

History of acts dealing with "division and election" down to and including act of 1820, ch. 191. Intent and construction of these acts. *Catlin v. Catlin*, 60 Md. 574.

An. Code, sec. 33. 1904, sec. 33. 1888, sec. 33. 1820, ch. 191, sec. 8.

9. Whenever a majority of the commissioners to be appointed in virtue of this article shall qualify they may proceed in the execution of the same in the same manner as they may do when the whole commissioners qualify as aforesaid.

An. Code, sec. 34. 1904, sec. 34. 1888, sec. 34. 1820, ch. 191, sec. 14.

10. In the execution of this article, and before any proceeding is had by the commissioners, they, or a majority of them, shall cause notice to be given to all parties concerned by advertisement set up at the door of the